IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8126 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH DHANILAL JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/03/2000

ORAL JUDGEMENT

1. The District Magistrate, Panchmahals, at Godhra, passed an order on September 3, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the present petitioner under the provisions of

the said Act.

2. The detaining authority took into consideration five offences registered against the detenu under the provisions of the Bombay Prohibition Act. The authority also took into consideration statements of four anonymous witnesses in respect of whom the detaining authority exercised powers under Section 9(2) of the PASA Act, by not disclosing the identity of these witnesses. The detaining authority labelled the detenu as a bootlegger and, after considering the possibility of resorting to less drastic remedies, came to a conclusion that detention under PASA Act is the only remedy that can be efficaciously employed in service in order to prevent the detenu from pursuing his illegal and anti-social activities.

3. The detenu has challenged the order of detention by this petition under Article 226 of the Constitution, on various grounds. Learned advocate, Mr. Prajapati, has placed reliance on the fact that the statements relied upon by the detaining authority have, in fact, been not verified by the detaining authority. They are verified by the Dy.S.P. and Sub-Divisional Magistrate before the papers were placed before the detaining authority and the detaining authority has simply agreed with these officers. Mr. Prajapati, therefore, submitted that the detaining authority has exercised powers under Section 9(2) of the PASA Act in absence of a subjective satisfaction for the need for exercise of these powers. Mr. Prajapati submitted that, if the grounds of detention are considered, it is very clear from the language employed by the detaining authority that the papers were placed before him after the verification by Dy.S.P. and Sub-Divisional Magistrate and the detaining authority itself has not verified the statements. It is also clear, according to Mr. Prajapati, from the language employed in the grounds of detention that verification by Dy.S.P. and Sub-Divisional Magistrate was not at the instance of the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act cannot be said to have been properly exercised. This has, therefore, adversely affected the right of the detenu in making an effective representation which would render the detention illegal. The petition may, therefore, be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. According to him, the detaining authority has relied on the verification by the Dy.S.P. and the Sub-Divisional Magistrate and, it is

not necessary for the detaining authority to verify the same personally and, therefore, the petition may not be entertained.

5. At the outset, it may be stated that the detaining authority has not filed any affidavit in reply to crease out the doubts raised by the detenu in this petition about the subjective satisfaction and application of mind while exercising powers under Section 9(2) of the PASA Act.

6. If the grounds of detention are considered, particularly, the language employed by the detaining authority therein while exercising powers under Section 9(2) of the PASA Act, the detaining authority states that statements of four anonymous witnesses have been recorded by Police Sub-Inspector, LCB, Godhra. Those statements are verified by Dy.S.P., Godhra Division, at Godhra and Sub-Divisional Magistrate, Godhra and that the detaining authority agrees with them. From the language employed, it is clear that the statements of anonymous witnesses are not personally verified by the detaining authority. The tenor of the language employed indicates that the statements were verified by the Dy.S.P. and the Sub-Divisional Magistrate, before they were being placed before the detaining authority and the detaining authority agreed with them. There does not appear any report either from Dy.S.P. or Sub-Divisional Magistrate on correctness and genuineness of the fear expressed by the witnesses, which could have been recorded by the verifying authorities and placed before the detaining authority. If the verifications are seen, it is only reiteration of the statements of the witnesses before those respective authorities and, therefore, whether verifying authorities were personally satisfied on the correctness and genuineness of the fear expressed by the witnesses calling for the exercise of powers under Section 9(2) of PASA Act, is not reflected from the verification recorded by these authorities. In absence of any report from such authorities to the detaining authority or affidavit from such authority or the detaining authority, this Court is at loss to appreciate how the powers could have been exercised by the detaining authority under Section 9(2) of the PASA Act. For the reasons stated above, the exercise of power under Section 9(2) of the PASA Act is, therefore, improper. Order of detention based thereon cannot be supported. This exercise of power in absence of such subjective satisfaction by the detaining authority has resulted into infringement of right of the detenu of making an effective representation. The order of detention and the

continued detention of the detenu, therefore, stand vitiated. The petition, therefore, deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 3, 1999 is hereby quashed. The detenu-Rakeshkumar Dhanilal Jaiswal is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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